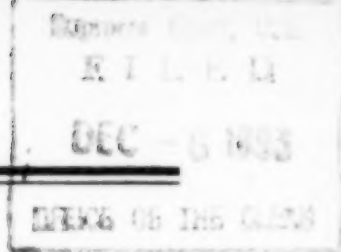


93 -762
No. 93-768



IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

JEROME B. GRUBART, INC.,

Petitioner,

v.

GREAT LAKES DREDGE & DOCK COMPANY, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

**BRIEF FOR RESPONDENT THE CITY OF CHICAGO
IN SUPPORT OF THE PETITION**

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Respondent the City of Chicago respectfully requests that this Court grant the petition for certiorari but that it defer consideration of the petition until after January 5, 1994, when the City will file its own petition from the same judgment.¹

ARGUMENT

This case began with the filing of a complaint in admiralty by respondent Great Lakes Dredge & Dock Co. seeking exoneration from or limitation of liability, as well as indemnity and contribution from the City of Chicago, after the City and Great Lakes were sued in state court

¹ The Petition for Certiorari does not identify the City of Chicago as a respondent. See Pet. ii. The City of Chicago was a party to the proceedings below, however, and hence is a respondent in this Court under this Court's Rule 12.4.

for their alleged role in causing the underground flooding of the Chicago business district on April 13, 1992. The state court action, now on interlocutory appeal to the Illinois Appellate Court on a number of questions of law, involves tens of thousands of plaintiffs and claims of hundreds of millions of dollars in damages. The Seventh Circuit in this case held that Great Lakes had properly invoked federal admiralty jurisdiction, relying on *Sisson v. Ruby*, 497 U.S. 358 (1990), this Court's most recent case concerning the scope of federal admiralty jurisdiction. Petitioner Jerome B. Grubart, Inc. ("Grubart"), obtained a stay of the Seventh Circuit's mandate under Fed. R. App. P. 41, which obligated Grubart to file its petition for certiorari within 30 days of the Seventh Circuit's judgment. The City did not seek a stay and will file its petition within the 90 days allowed by this Court's Rules.

For reasons that we shall explain in more detail in our petition, the decision below amply warrants review by this Court. The Seventh Circuit's decision that Great Lakes properly invoked federal admiralty jurisdiction conflicts with decisions of other courts of appeals and with prior decisions of this Court, including *Sisson*. The decision also raises fundamental and recurring questions concerning the scope of federal admiralty jurisdiction that should be addressed by this Court, particularly given that the Seventh Circuit's resolution of the issue is manifestly incorrect. Finally, the Seventh Circuit's decision raises substantial federalism questions because it ousts state law in any case within the admiralty jurisdiction. See, e.g., *Pope & Talbot, Inc. v. Hawk*, 346 U.S. 406 (1953). As a result, if the decision below stands, what are quintessentially state tort claims now pending in state court will be tried in federal court under federal common law.

The importance of this last point cannot be overemphasized. In this case, the shift from state court to federal court may seriously skew the outcome of the litigation.

The City has raised a number of state law immunities in the state court litigation, the applicability of some of which are now on appeal to the state appellate court. The validity of such immunities in admiralty, however, may well be subject to a different analysis, and the application of federal law may result in a different outcome. Cf. *Workman v. Mayor of New York*, 179 U.S. 552 (1900) (municipality may not assert sovereign immunity as a defense to a maritime claim). Thus, if this case goes forward in admiralty, the City could be stripped of the tort immunities that might otherwise apply in state court. Great Lakes, by contrast, has sought refuge in the Limitation of Vessel Owner's Liability Act, 46 U.S.C. §§ 181-96, which would limit its liability for its part in the multi-million dollar flood to the value of the two barges and one tug that it used to perform the work that allegedly caused the flood. See Pet. App. 2, 27-28, 36-38. If Great Lakes is successful in its limitation action, and the City's state law immunities are not credited in federal court, the City would, if found negligent, bear the entire financial consequences for the flood. There is little reason to think that this would be the result in state court.

As the district court stated in dismissing Great Lakes' admiralty complaint (Pet. App. 39-40):

[T]he relevant facts alleged to be present in this now historic calamity to our city do not involve traditional maritime concerns. Federal admiralty jurisdiction will be sustained only if a case presents the need to protect maritime commerce through adherence to a uniform and specialized set of rules such as those involving navigation and seaworthiness. There is no compelling reason to adjudicate the host of issues raised by the pleadings under this specialized set of rules. Traditional common law rules of tort and contract should do quite nicely in the resolution of the material disputes here; the specialization of admiralty rules is not necessary. The totality of circumstances lead unyieldingly to that conclusion.

Simply put, we have land-based injuries caused by land-based activities undertaken upon a non-moving vessel on a river acting as a stationary work platform. The maritime connection of the principal activities is neither direct nor material and supply none of the causation for the alleged injuries. There are no traditional maritime concerns present here and, without it, no admiralty jurisdiction.

In our petition, we plan to raise essentially the same questions that are presented in this petition, and to elaborate upon the reasons that both petitions should be granted. We also plan to highlight the effect of the decision below on the tort liabilities and immunities of state and local governments, a matter not discussed in Grubart's petition. For these reasons, this Court's time will be most efficiently allocated if it considers both petitions together. We therefore suggest that the Court defer consideration of the petition until after the City's petition is filed on January 5, 1994, and any other party wishing to respond has had time to do so. At that time, this petition and the City's should both be granted.

CONCLUSION

This case should be consolidated with the petition the City will file on January 5, 1994. Both petitions for certiorari should then be granted.

Respectfully submitted,

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December 6, 1993